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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Policies and Rules
Concerning Toll Fraud

CC Docket No. 93-292

INITIAL COMMENTS
OF
MASSACHUSETTS PAYPHONE ASSOCIATION, INC.

The Massachusetts Payphone Association, Inc. ("MPA"), acting through counsel, hereby sets out its Initial Comments in response to the Notice of Proposed Rulemaking released by the Commission in this Docket on December 2, 1993 ("NPRM").

I. INTRODUCTION

1. The MPA is a non-profit, Massachusetts corporation whose membership includes the major providers of competitive pay telephone service in the Commonwealth of Massachusetts and surrounding states. A number of its members have been victims of payphone fraud. At least two have been the subject of law suits filed by AT&T to recover under the strict liability provisions of its Tariff No. 1. Therefore, the MPA and its members have a clear and direct interest in the outcome of this proceeding.

2. The MPA commends the Commission for seeking to develop a fairer and more balanced approach to the problem of liability for payphone fraud. The MPA generally supports the Commission's proposal. However, that proposal still does not fully recognize that it is local exchange and interexchange carriers who control the attributes of the network. Those carriers are in a position to most efficiently protect against fraud. Therefore, they should have primary responsibility for

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preventing and assuming liability for fraud where a competitive payphone provider takes protective steps reasonably within its power and resources to do so.

**II. THE COMMISSION SHOULD IDENTIFY A SET OF
"REASONABLE STEPS" WHICH EXEMPT
THOSE WHO EMPLOY THEM FROM LIABILITY**

3. The Commission proposes to exempt from fraud liability those "payphone providers who take reasonable steps to prevent fraud and are not customers." NPRM, at p. 18, at ¶ 31.

4. The MPA supports the proposal that competitive payphone providers be required to take "reasonable steps" to protect against fraud. The Commission should define those steps with precision. They should include those protections that are widely available and effective for a reasonable cost. Originating line screening, billed number screening and international direct-dialed-call screening are examples of such steps. Other efforts, such as internal equipment programming schemes available to competitive payphone providers, can also be considered.

5. While the list of these steps should be specific, it should not be exhaustive. Such a lengthy list would not be reasonable, but excessive. It would put an unreasonable and unfair burden on individual competitive providers. This is especially true when local exchange and interexchange carriers are in a position to impose broad-based, network-wide safeguards.

6. Competitive payphone providers who implement these prescribed reasonable steps should be exempt from liability for fraud from their phones. In particular, the Commission must expand the Florida Public Service Commission concept to provide that competitive

payphone providers who subscribe to international direct-dialed call blocking will not be liable for any such calls. Failure to expand the exemption would render meaningless the effort and expense of competitive payphone providers subscribing to this service.

**III. MERE PRESUBSCRIPTION SHOULD NOT DEFEAT THE
EFFECT OF REASONABLE STEPS TO
PROTECT AGAINST FRAUD**

7. A competitive payphone provider who presubscribes to a particular carrier should not automatically be liable for any and all fraud over that carrier's network. Mere presubscription should not erase the absolution from liability afforded by reasonable steps taken to avoid fraud. "Customers" who take these steps should be equally eligible and not penalized.

8. In some cases, competitive payphone providers have no choice but to presubscribe to a particular interchange carrier (i.e., "PIC-None" is not available or there is no competitive interexchange service). In other cases, the physical and technical terms on which the competitive payphone provider installs his equipment may be dictated by the presubscribed carrier itself. In other words, the carrier controls how that equipment interfaces with the telephone network. In such a situation, the carriers own requirements may have directly caused or contributed to the fraud.

9. If the Commission decides that non-presubscription is a prerequisite to eligibility, then it must require that option (i.e., "PIC-None") to be afforded every where. Otherwise, competitive payphone providers in certain locales will be at a marked disadvantage, literally powerless to protect themselves from liability because they cannot meet an essential criterion.

**IV. THE COMMISSION SCHEME MUST
BE NON-DISCRIMINATORY**

10. Currently, local exchange carrier payphones are not held liable to interexchange carriers for fraudulent calls carried by the latter (e.g., AT&T does not charge New England Telephone). Yet the same interexchange carriers, such as AT&T, assiduously pursue competitive payphone operators, while its former operating subsidiaries go scott free.

11. Such a system is unfair. It violates the spirit, if not the letter, of Section 202 of the Communications Act. Such a policy is clearly anticompetitive on its face.

12. The Commission has never consciously sanctioned such a discriminatory system. It cannot do so now. Whatever requirements, liabilities or exemptions apply to local exchange carrier payphones, must also apply to competitive payphones. There cannot be a double standard between competitors.

**V. CARRIERS SHOULD HAVE REASONABLE OBLIGATIONS TO
MONITOR AND RESPOND TO INSTANCES OF FRAUD**

13. Carriers should have a responsibility to take reasonable steps to monitor their networks to identify sources and instances of fraud. Further, carriers should be required to use all the tools available to them to detect and deter the causes of fraud in response to requests by competitive payphone providers.

14. Any carrier who sits back, relying on the strict liability provisions of its tariff, and fails to use the resources at its command should not be permitted to hold the victim liable, especially where that victim diligently raises the problem with the carrier. The public

interest demands such a mutual effort, particularly on the part of carriers with their substantial resources.

VI. CONCLUSION

15. The Commission's NPRM lays the groundwork for developing a fair and equitable policy on toll fraud liability. However, the policy cannot treat one competitor differently than the other. Such favoritism does little to enhance competition and more to encourage monopoly.

16. Competitive payphone providers who invest in a set of reasonable measures identified by the Commission should not be held strictly liable for fraudulent calls originating at their phones. The fact that the payphone is presubscribed to the carrier seeking retribution should not dictate otherwise. The Commission's Rules should be so extended.

Respectfully submitted,

MASSACHUSETTS PAYPHONE ASSOCIATION

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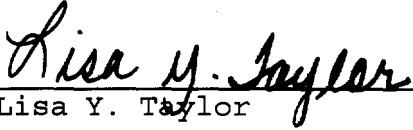
Dated: January 14, 1994

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CERTIFICATE OF SERVICE

I, Lisa Y. Taylor, a secretary in the law firm of Besozzi, Gavin & Craven do hereby certify that a copy of the foregoing "**INITIAL COMMENTS OF THE MASSACHUSETTS PAYPHONE ASSOCIATION, INC.**" has been hand delivered on this 11th day of January, 1994 to the following individual:

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Lisa Y. Taylor